



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 4, 1998

Ms. Linda Wiegman
Supervising Attorney
Office of General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR98-1392

Dear Ms. Wiegman:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 115484.

The Texas Department of Health (the "department") received a request for the "complete file," concerning the National Health Laboratories. You have submitted the information which you contend is responsive to the request. You indicate that information that is not marked or highlighted has already been released to the requestor. However, you claim that the "highlighted/marked" information is protected from required public disclosure by section 552.101 of the Government Code, in conjunction common-law privacy and section 5.08, article 4495b, V.T.C.S. We have considered the arguments you have raised and have reviewed the submitted information.


We first address section 5.08 of V.T.C.S. article 4495b, the Medical Practice Act (the "MPA"), which applies to "[c]ommunications between one licensed to practice medicine, relative to or in connection with any professional services as a physician to a patient" and "[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician." Information subject to the MPA is confidential and may be disclosed only in accordance with the MPA. See V.T.C.S. art. 4495b, § 5.08(a), (b), (c), (j); Open Records Decision No. 598 (1991). In this instance, it is not apparent to this office whether the submissions contain information that was obtained from medical records and communications subject to the MPA. Based on the submitted information, we conclude that the MPA does not apply to the records at issue. Therefore, you may not withhold any information under the MPA.

Section 552.101 also applies to information made confidential by the common-law right to privacy. *Industrial Found. of the S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *See id.*

We have examined the marked information you seek to withhold based on an identified individual whose privacy interest may be at issue. We disagree with your markings. However, we agree that certain information, which we have marked and bracketed, should be withheld pursuant to common-law privacy. Accordingly, we conclude the department must withhold the information marked by our office pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,


Sam Haddad
Assistant Attorney General
Open Records Division

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Ref.: ID# 115484

Enclosures: Marked documents

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(w/o enclosures)